
SENATE BILL No. 357

DIGEST OF INTRODUCED BILL

Citations Affected: IC 26-1-9.1.

Synopsis: UCC financing statements. Provides that a security interest, instead of an unperfected security interest, is subordinate to the rights of certain other persons with priority and to certain lien creditors. Eliminates the requirement that the debtor authenticate financing statements and amendments to financing statements. Requires a secured party to furnish a copy of the initial financing statement to the debtor not later than 30 days after the filing of the initial financing statement. Provides that the burden of establishing compliance with the requirement to furnish a copy of the initial financing statement falls on the secured party. Establishes remedies for the failure of a secured party to furnish a copy of the initial financing statement to a debtor. Allows a debtor to recover an additional \$500 from a secured party that does not furnish a copy of the initial financing statement to a debtor. Makes certain changes to conform to uniform law. Makes technical corrections.

Effective: July 1, 2001.

Kenley

January 16, 2001, read first time and referred to Committee on Judiciary.

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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

SENATE BILL No. 357

A BILL FOR AN ACT to amend the Indiana Code concerning commercial law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 26-1-9.1-317, AS ADDED BY P.L.57-2000,
2 SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2001]: Sec. 317. (a) ~~An unperfected~~ A security interest or
4 agricultural lien is subordinate to the rights of:

5 (1) a person entitled to priority under IC 26-1-9.1-322; and

6 (2) **except as provided in subsection (e)**, a person that becomes
7 a lien creditor before the earlier of the time:

8 (A) the security interest or agricultural lien is perfected; or

9 (B) one (1) of the conditions specified in
10 IC 26-1-9.1-203(b)(3) is met;

11 and a financing statement covering the collateral is filed.

12 (b) Except as otherwise provided in subsection (e), a buyer, other
13 than a secured party, of tangible chattel paper, documents, goods,
14 instruments, or a security certificate takes free of a security interest or
15 agricultural lien if the buyer gives value and receives delivery of the
16 collateral without knowledge of the security interest or agricultural lien
17 and before it is perfected.



(c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in IC 26-1-9.1-320 and IC 26-1-9.1-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty (20) days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor that arise between the time the security interest attaches and the time of filing.

SECTION 2. IC 26-1-9.1-408, AS ADDED BY P.L.57-2000, SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 408. (a) Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor that relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment, transfer, creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) A rule of law, statute, or regulation, which prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a

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promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment, transfer, creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than IC 26-1-9.1 but is ineffective under subsection (a) or (c), the ~~assignment, transfer,~~ creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) is not enforceable against the person obligated on the promissory note or the account debtor;

(2) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) This section prevails over any inconsistent provision in statute, administrative rule, or regulation.

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SECTION 3. IC 26-1-9.1-502, AS ADDED BY P.L.57-2000,
SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2001]: Sec. 502. (a) Subject to subsection (b), a financing
statement is sufficient only if it:

- (1) provides the name of the debtor;
- (2) provides the name of the secured party or a representative of
the secured party; **and**
- (3) indicates the collateral covered by the financing statement.
and
- ~~(4) is authenticated by the debtor, if the financing statement is an
initial financing statement.~~

(b) Except as otherwise provided in IC 26-1-9.1-501(b), to be
sufficient, a financing statement that covers as-extracted collateral or
timber to be cut, or which is filed as a fixture filing and covers goods
that are or are to become fixtures, must satisfy subsection (a) and also:

- (1) indicate that it covers this type of collateral;
- (2) indicate that it is to be filed in the real property records;
- (3) provide a description of the real property to which the
collateral is related that is sufficient to give constructive notice of
a mortgage under the law of this state if the description were
contained in a record of the mortgage of the real property; and
- (4) if the debtor does not have an interest of record in the real
property, provide the name of a record owner.

(c) A record of a mortgage is effective, from the date of recording,
as a financing statement filed as a fixture filing or as a financing
statement covering as-extracted collateral or timber to be cut only if:

- (1) the record indicates the goods or accounts that it covers;
- (2) the goods are or are to become fixtures related to the real
property described in the record or the collateral is related to the
real property described in the record and is as-extracted collateral
or timber to be cut;
- (3) the record satisfies the requirements for a financing statement
in this section other than an indication that it is to be filed in the
real property records; and
- (4) the record is recorded.

(d) A financing statement may be filed before a security agreement
is made or a security interest otherwise attaches.

(e) To the extent that IC 36-2-11-15 applies to require the
identification of the preparer of a financing statement, the failure of the
financing statement to identify the preparer does not affect the
sufficiency of the financing statement.

(f) This subsection does not apply to a financing statement



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described in IC 26-1-9.1-706. Not later than thirty (30) days after the date the initial financing statement is filed, the secured party that files the initial financing statement shall furnish a copy of the initial financing statement to the debtor. The secured party has the burden of establishing compliance with this subsection. The failure of the secured party to comply with this subsection does not affect the sufficiency of the initial financing statement. A person who fails to comply with this subsection is subject to IC 26-1-9.1-625.

SECTION 4. IC 26-1-9.1-506, AS ADDED BY P.L.57-2000, SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 506. (a) A financing statement substantially satisfying the requirements of IC 26-1-9.1-501 through IC 26-1-9.1-527 is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) Except as otherwise provided in subsection (c), a financing statement that fails to be authenticated by the debtor or fails sufficiently to provide the name of the debtor in accordance with IC 26-1-9.1-503(a) is seriously misleading.

(c) If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails to sufficiently provide the name of the debtor in accordance with IC 26-1-9.1-503(a), the name provided does not make the financing statement seriously misleading.

(d) For purposes of IC 26-1-9.1-508(b), the "debtor's correct name" in subsection (c) means the correct name of the new debtor.

SECTION 5. IC 26-1-9.1-509, AS ADDED BY P.L.57-2000, SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 509. (a) A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) ~~either:~~

~~(A)~~ the debtor authorizes the filing in an authenticated record or under subsection (b) or (c); or

~~(B)~~ (2) the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien. ~~and~~

(2) the initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement, is authenticated by the debtors

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covered by the financing statement.

(b) By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

- (1) the collateral described in the security agreement; and
- (2) property that becomes collateral under IC 26-1-9.1-315(a)(2), whether or not the security agreement expressly covers proceeds.

(c) By acquiring collateral in which a security interest or agricultural lien continues under IC 26-1-9.1-315(a)(1), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under ~~IC 26-1-9.1-315(a)(1)~~. **IC 26-9.1-315(a)(2).**

(d) A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

- (1) the secured party of record authorizes the filing; or
- (2) the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by IC 26-1-9.1-513(a) or IC 26-1-9.1-513(c), the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) If there is more than one (1) secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (d).

SECTION 6. IC 26-1-9.1-625, AS ADDED BY P.L.57-2000, SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 625. (a) If it is established that a secured party is not proceeding in accordance with IC 26-1-9.1, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) Subject to subsections (c), (d), and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with IC 26-1-9.1. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) Except as otherwise provided in IC 26-1-9.1-628:

- (1) a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) for its loss; and
- (2) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply

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with IC 26-1-9.1-601 through IC 26-1-9.1-628 may recover for that failure in any event an amount not less than the credit service charge plus ten percent (10%) of the principal amount of the obligation or the time-price differential plus ten percent (10%) of the cash price.

(d) A debtor whose deficiency is eliminated under IC 26-1-9.1-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under IC 26-1-9.1-626 may not otherwise recover under subsection (b) for noncompliance with the provisions of IC 26-1-9.1-601 through IC 26-1-9.1-628 relating to collection, enforcement, disposition, or acceptance.

(e) In addition to any damages recoverable under subsection (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover five hundred dollars (\$500) in each case from a person that:

- (1) fails to comply with IC 26-1-9.1-208;
- (2) fails to comply with IC 26-1-9.1-209;
- (3) files a record that the person is not entitled to file under IC 26-1-9.1-509(a);
- (4) fails to cause the secured party of record to file or send a termination statement as required by IC 26-1-9.1-513(a) or IC 26-1-9.1-513(c);
- (5) fails to comply with IC 26-1-9.1-616(b)(1) and whose failure is part of a pattern or consistent with a practice, of noncompliance; ~~or~~
- (6) fails to comply with IC 26-1-9.1-616(b)(2); **or**
- (7) fails to comply with IC 26-1-9.1-502(f).**

(f) A debtor or consumer obligor may recover damages under subsection (b) and, in addition, five hundred dollars (\$500) in each case from a person that, without reasonable cause, fails to comply with a request under IC 26-1-9.1-210. A recipient of a request under IC 26-1-9.1-210 that never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under IC 26-1-9.1-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

SECTION 7. IC 26-1-9.1-705, AS ADDED BY P.L.57-2000,



SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 705. (a) If action, other than the filing of a financing statement, is taken before IC 26-1-9.1 takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before IC 26-1-9.1 takes effect, the action is effective to perfect a security interest that attaches under IC 26-1-9.1 within one (1) year after IC 26-1-9.1 takes effect. An attached security interest becomes unperfected one (1) year after IC 26-1-9.1 takes effect unless the security interest becomes a perfected security interest under IC 26-1-9.1 before the expiration of that period.

(b) The filing of a financing statement before IC 26-1-9.1 takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under IC 26-1-9.1.

(c) IC 26-1-9.1 does not render ineffective an effective financing statement that is filed before IC 26-1-9.1 takes effect and satisfied the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in IC 26-1-9-103, before its repeal. However, except as otherwise provided in subsections (d) and (e) and IC 26-1-9.1-706, the financing statement ceases to be effective at the earlier of:

- (1) the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or
- (2) June 30, 2006.

(d) The filing of a continuation statement after IC 26-1-9.1 takes effect does not continue the effectiveness of the financing statement filed before IC 26-1-9.1 takes effect. However, upon the timely filing of a continuation statement after IC 26-1-9.1 takes effect and in accordance with the law of the jurisdiction governing perfection as provided in subsection (c), the effectiveness of a financing statement filed in the same office in that jurisdiction before IC 26-1-9.1 takes effect continues for the period provided by the law of that jurisdiction.

(e) Subsection (c)(2) applies to a financing statement that is filed against a transmitting utility before IC 26-1-9.1 takes effect and satisfied the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in IC 26-1-9-103, before its repeal, only to the extent that subsection (c) provides that the law of a jurisdiction other than jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) A financing statement that includes a financing statement filed

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1 before IC 26-1-9.1 takes effect and a continuation statement filed after
2 IC 26-1-9.1 takes effect is effective only to the extent that it satisfies
3 the requirements of ~~subsection (e)~~ **IC 26-1-9.1-501 through**
4 **IC 26-1-9.1-527** for an initial financing statement.

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